

**KENTUCKY PERSONNEL BOARD**  
**MINUTES OF JANUARY 13, 2012**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on, January 13, 2012, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman  
Larry B. Gillis, Vice Chairman  
David B. Stevens, Member  
David F. Hutcheson, Jr., Member  
Susan Gardner, Member  
Tommy W. Chandler, Member  
Donald W. "Don" Blevins, Member  
Mark A. Sipek, Executive Director and Secretary  
Boyce A. Crocker, General Counsel  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD DECEMBER 9, 2011**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Dr. Stevens moved to approve the minutes, as submitted. Mr. Hutcheson seconded, and the motion carried 7-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek reported that the appeal of *Finance Cabinet v. Wanda Faye Wade* was granted discretionary review by the Kentucky Supreme Court. This is a unique case involving whether or not there was a waiver of a pre-termination conference and what rights the agency had to effect a second dismissal of the employee. Mr. Sipek will keep the Board informed of this matter.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

#### 4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington came forward to present the Personnel Cabinet's report.

Ms. Bevington stated that the amendments to 101 KAR 1:325, Initial Probationary Periods, were withdrawn by the agency [Education and Workforce Development Cabinet].

Ms. Bevington advised that the Employee Performance Evaluation System regulation [101 KAR 2:180] was filed as an emergency regulation and is now in effect.

Ms. Bevington stated that a tutorial has been launched by the Governmental Services Center (GSC), which provides an overview of the criteria for hiring managers. The first class will begin this January. Mr. Blevins asked if this training was mandatory. Ms. Bevington responded that it was not mandatory, but it is something for the Personnel Cabinet to consider.

Ms. Bevington announced that a new wellness program, Humana Vitality, will be available soon. This program replaces Virgin Healthmiles, which focused mainly on physical activity. Humana Vitality will address nutrition, stress counseling, etc. and is available to all Kentucky health plan members. Upon a request from Dr. Stevens for more information, Ms. Bevington stated that she will provide information to the Board.

Ms. Bevington stated that W-2's will be converted from the old payroll system to KHRIS and employees will be working on this project over the weekend. W-2's will be issued by January 31, 2012.

At the request of Dr. Stevens, Ms. Bevington stated that she would pull information concerning the resignation of employees who were off on extended sick leave, specifically, Workers' Compensation, and the number of employees who were impacted. Ms. Bevington stated that this is a complex task; however, she hopes to have the information by the next Board meeting.

Upon conclusion of the Personnel Cabinet's report, Chairman Sapp called the parties forward for oral argument.

## 5. ORAL ARGUMENTS

### A. Jennifer Click v. Energy and Environment Cabinet

Present for oral argument were counsel for Appellant, the Hon. Marie Brannon; Appellant, Jennifer Click; and counsel for Appellee, the Hon. Gordon Slone. After presenting oral arguments, the parties answered questions from the Board.

### B. Ronald Godfrey, Jr. v. Cabinet for Health and Family Services (3 appeals)

Present for oral argument were counsel for Appellant, the Hon. John Frith Stewart; and counsel for Appellee, the Hon. Jennifer Wolsing. After presenting oral arguments, the parties answered questions from the Board.

## 6. MOTIONS

### A. Theresa Graham v. Cabinet for Health and Family Services

--Appellee's Motion to File Late Exceptions

Mr. Sipek advised that the Appellee filed a Motion to File Late Exceptions. The deadline is set by statute; therefore, Appellee's motion should be rejected. However, if the Board needs more information, they can request the parties' presence for oral argument.

Mr. Hutcheson moved to deny Appellee's Motion to File Late Exceptions. Judge Chandler seconded and the motion carried 6-1, with Dr. Stevens opposing.

## 7. INVESTIGATIONS

### A. **Request for Investigation of Dept. of Agriculture**

[Hiring of Two Assistant Directors – request by Larry Gillis]

--Recommendation of Investigator

--Response by Larry Gillis

--Statement of Current Agriculture Commissioner James R. Comer  
(General Counsel Holly VonLuehrte)

Present were Mr. Larry Gillis and the Hon. Holly Harris VonLuehrte and the Hon. Nicole Liberto from the Department of Agriculture.

Mr. Sipek stated that the Board and parties to the investigation were provided with the Report and Recommendation. Mr. Gillis provided a written response and wishes to address the Board. Further, Commissioner James Comer wrote a letter dated January 13, 2012, to the Board Members and staff. Mr. Sipek, with Chairman Sapp's approval, asked that Ms. VonLuehrte, General Counsel with the Department of Agriculture, to come forward. Ms. VonLuehrte read Commissioner Comer's letter. In summary, Commissioner Comer first thanked the Board for its service to state agencies and employees. He also thanked Mr. Sipek for speaking with his transition team which was both "necessary and informative." He advised that he is working with the Auditor of Public Accounts to have the Department of Agriculture's operations and expenditures audited to resolve any issues. Commissioner Comer stated that the Department has begun the process to hire a new Personnel Director and will take the time to find the right candidate with the experience and work attitude necessary to perform this role. Ms. VonLuehrte added that Commissioner Comer is committed to ensuring a smooth and ethically appropriate transition. Before Ms. VonLuehrte left the meeting, Chairman Sapp offered the Board's assistance, if needed.

Chairman Sapp called the Hon. Nicole Liberto, Department of Agriculture, to come forward. Mr. Gillis was also present and made a statement on his own behalf. Mr. Gillis stated that on June 10, 2011, he requested the Board to investigate the hiring of two non-merit employees to Assistant Director merit positions. Mr. Gillis stated that he was unable to get specific information from the Department of Agriculture. However, through an investigation, Mr. Sipek was able to piece together information from witnesses and documents to arrive at a recommendation. Mr. Sipek's report shows that the actions of the Department of Agriculture were intentional. Mr. Gillis asked that the report be accepted and placed on the Personnel Board's website so that interested parties can view the report and know that the Personnel Board will uphold merit laws. Chairman Sapp asked Ms. Liberto if she had anything to add, which Ms. Liberto did not.

Chairman Sapp asked for any discussion. Mr. Blevins stated that inappropriate conduct occurred and was disturbed that the individuals involved would not suffer any consequences. He questioned whether there was a penalty for such a violation and, if so, why a penalty was not recommended.

In response, Mr. Sipek cited KRS 18A.990 [Penalties], stating that the actions violated would be considered a misdemeanor which carried a punishment of anywhere from thirty days to the maximum of six months in jail. Mr. Sipek stated that he did not make a recommendation for any penalty based on the facts that: 1) the merit appointments were rescinded, 2) an investigation was being conducted by the Ethics

Commission, and 3) the recent change in administration. Mr. Sipek stated that there is also a one-year statute of limitation, which began January 16, 2011 (the date of the initial appointment), and ends January 16, 2012.

Mr. Blevins stated if these two positions were necessary, that the citizens of the Commonwealth have been deprived of their services and the services of the Department of Agriculture. Mr. Sipek responded that he could not conclude from his investigation that these two positions were necessary. The only reason he was given for the justification of these two positions was to assist with the KHRIS project. Mr. Blevins asked whose authority was it to determine if these two positions are necessary. Mr. Sipek stated that ultimately it is the appointing authority's decision to make that determination.

Judge Chandler asked if Ms. Willis and Ms. Fentress-Laird were still employed with the Department. Ms. Liberto stated that Ms. Willis was still employed with the Department, but Ms. Fentress-Laird was not.

Ms. Gardner stated that she hoped that all the agencies would take heed of the seriousness of personnel matters once the Report and Recommendation was made public. She stated that she was encouraged by Commissioner Comer's comments and willingness to meet with staff of the Personnel Board before he took office.

Mr. Blevins commended Mr. Sipek stating that his report was fair and that it will show that an effort was made to correct the injustice.

Chairman Sapp stated that with the notoriety of the event and the report, that it is understood there are people committed to protect the integrity of merit employees and the employment process.

Dr. Stevens moved to accept the Report and Recommendation. Mr. Hutcheson seconded and the motion carried 6-0, with Mr. Gillis recusing.

On a final note, Mr. Blevins wanted to commend and thank Mr. Gillis for his courage to step forward to bring about the investigation, as some people may feel intimidated by the system.

## **B. Anonymous Request for Investigation of Department of Agriculture**

Mr. Sipek stated that in August 2011 the Board considered the request for investigation and did two things:

1. Separated the issues that did not involve KRS 18A (i.e. the refrigerator) from the allegation that another merit position was filled in violation of the statute.
2. An appeal was filed by Ms. Rebecca Wheat, which coincided with the anonymous request for investigation. Ms. Wheat's appeal was settled; therefore, the process did not get into the merits of the hiring decision.

The anonymous complaint has been deferred the past few months awaiting the outcome of Mr. Gillis' request for investigation. Mr. Sipek stated that it is time to consider the merits of the request and whether the Board is interested in pursuing the investigation.

Mr. Gillis recused himself from discussing or voting on this matter.

Chairman Sapp asked whether the Board wanted to pursue this matter. Mr. Blevins stated that the Department of Agriculture has a new Commissioner who has already taken interest and action concerning these matters. Mr. Blevins asked for Mr. Crocker's opinion and whether the matter should be considered moot or have the Board staff to write a letter to Commissioner Comer informing him of the anonymous request for investigation. Mr. Crocker advised that there would likely be a twelve-month probationary period for the position in question that may have run out. When he heard that Commissioner Comer had requested an audit, he felt that maybe Commissioner Comer could look into the anonymous request for investigation at the same time.

Mr. Blevins moved to defer this matter to the next meeting of the Board, with a letter going to Commissioner Comer and the State Auditor informing them of the anonymous request for investigation and whether the matter should be pursued. Judge Chandler seconded and the motion carried 6-0, with Mr. Gillis recusing.

## 8. CLOSED SESSION

Mr. Hutcheson moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Ms. Gardner seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 7-0. (11:30 a.m.)

Mr. Hutcheson moved to return to open session. Mr. Gillis seconded and the motion carried 7-0. (1:00 p.m.)

## 9. CASES TO BE DECIDED

**The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.**

### A. Ronald Godfrey, Jr. v. Cabinet for Health and Family Services (3 appeals)

Mr. Hutcheson moved to note Appellant's exceptions, Appellee's response, and oral argument and to accept the recommended order dismissing the appeal. Ms. Gardner seconded and the motion carried 7-0.

### B. Jennifer Click v. Energy and Environment Cabinet

Mr. Blevins moved to note Appellee's exceptions, Appellant's response, and oral argument and to defer this matter to the next meeting of the Board. Mr. Gillis seconded and the motion carried 5-2, with Dr. Stevens and Ms. Gardner opposing.

C. Elizabeth Whitehead-Helton v. Cabinet for Health and Family Services  
(2 appeals) - **Deferred from December**

Mr. Hutcheson moved to note Appellant's exceptions, Appellee's response and oral argument, and to accept the Final Order Altering [Appeal No 2010-099 be sustained to the extent that the dismissal of the Appellant be rescinded and reduced to a thirty-day suspension; and Appeal No. 2010-027 be dismissed], as attached to the minutes. Dr. Stevens seconded and the motion carried 7-0.

D. Joseph Ross v. Labor Cabinet

Dr. Stevens moved to note Appellee's exceptions and Appellant's response and to accept the recommended order sustaining the appeal. Ms. Gardner seconded and the motion carried 7-0.

E. Michael Baase v. Transportation Cabinet

Mr. Gillis moved to accept the recommended order sustaining the appeal to the extent therein. Mr. Hutcheson seconded and the motion carried 7-0.

F. Ralph Ellis v. Justice and Public Safety Cabinet (Corrections)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. Gardner seconded and the motion carried 7-0.

G. Theresa Graham v. Cabinet for Health and Family Services

Dr. Stevens moved to note Appellee's motion to file late exceptions (denied by the Board), Appellee's exceptions and request or oral argument (untimely filed) and to accept the recommended order sustaining the appeal to the extent therein. Mr. Hutcheson seconded and the motion carried 7-0.

H. Shelly Harrod v. Cabinet for Health and Family Services

Judge Chandler moved to accept the recommended order dismissing the appeal. Ms. Gardner seconded and the motion carried 7-0.



I. Charlene Hoke v. Justice and Public Safety Cabinet (Corrections)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

J. Ronald Johnson v. Justice and Public Safety Cabinet (Corrections) (2 appeals)

Ms. Gardner moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 7-0.

K. James Loy v. Transportation Cabinet

Dr. Stevens moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 7-0.

L. Linda Netherton v. Transportation Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

M. Michael Scroggins v. Justice and Public Safety Cabinet (Corrections)

Judge Chandler moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 7-0.

N. Kimberly Weathers v. Cabinet for Health and Family Services

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. Gardner seconded and the motion carried 7-0.

10. **WITHDRAWALS**

Mr. Hutcheson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Judge Chandler seconded and the motion carried 7-0.

- A. Fredric M. Farmer v. Finance and Administration Cabinet
- B. Tedrick Green v. Cabinet for Health and Family Services
- C. Alberto D. Otano, Sr. v. Cabinet for Health and Family Services

D. Glenn Martin v. Cabinet for Health and Family Services

## 11. SETTLEMENTS

A. Timothy Anderson v. Transportation Cabinet (2011-025)

Ms. Gardner moved to defer settlement A. Mr. Gillis seconded and the motion carried 7-0.

B. Timothy Anderson v. Transportation Cabinet (2011-098)

C. Wade Percle v. Justice and Public Safety Cabinet (Corrections)

Judge Chandler moved to accept the following settlements [B. & C.] *en bloc* and to accept the settlements as submitted by the parties; sustaining the appeal to the extent set forth in the settlement. Mr. Blevins seconded and the motion carried 7-0.

D. Melissa Jan Williamson v. Labor Cabinet

Mr. Blevins moved to reject settlement D. Mr. Hutcheson seconded and the motion carried 7-0.

## 12. OTHER

Chairman Sapp requested, with approval from the Board, that the Personnel Cabinet be advised to review settlements between agencies and employees and to ensure the terms and conditions fall within the bounds of personnel rules and regulations before approving them.

Mr. Blevins moved to approve Chairman Sapp's request. Ms. Gardner seconded and the motion carried 7-0.

### **Proposed Legislation**

Chairman Sapp advised the members that typically LRC notifies staff of legislation that might impact the Board. The Board reviews the proposed legislation and provides comments or feedback, which in turn is conveyed to the representatives and LRC.

### **House Bill 110 (BR 14), Representative Burch**

Mr. Sipek stated that the bill proposed by Representative Burch concerns audits of state agencies being reported to the Board if there is a determination that the agency had misappropriated funds. If the Board determines it has jurisdiction, it can take action if a violation occurred, which could result in the termination of employees.

Mr. Gillis expressed his concern that it would add to the Board's caseload. Since audits are difficult to understand, the Board would need specialized hearing officers. Chairman Sapp stated that it would conflict with appeals. Mr. Blevins suggested that the Secretary of State or the Attorney General's office would be more appropriate to handle this matter. Judge Chandler stated that the purpose of the Board is to handle appeals of merit employees. Ms. Gardner added that the Board considers non-merit employees' appeals too, although limited. Mr. Gillis said that this proposed bill is limited to non-merit employees and that the appointing authority can take the appropriate action. Mr. Crocker stated that non-merit employees terminated or disciplined for cause or alleging discrimination may file an appeal with the Board. Mr. Sipek stated the difference here is that the Board would determine who was at fault and have the authority to terminate an employee. As Chairman Sapp had stated earlier, the Board would prosecute the action and then decide the action.

Mr. Crocker stated that Representative Cherry asked for the Board's input. Mr. Crocker advised that he will contact Representative Cherry and inform him that Representative Burch has the right idea; but the wrong agency (Personnel Board) to send the audits to.

### **House Bill 237 (BR 863), Representative Westrom**

Mr. Crocker stated that this bill proposes that the Personnel Board provide an annual report of disciplinary actions taken against social workers; specifically if a license is revoked. Mr. Sipek stated that the Board does not maintain any records to generate a report. After some discussion it was determined that the Personnel Board was not the appropriate agency and Mr. Crocker will advise Representative Westrom.

Judge Chandler expressed his appreciation of the Board staff and Mr. Gillis. He also praised Mr. Sipek for doing an excellent job on the Agriculture investigation.

Mr. Blevins expressed an interest in the Personnel Cabinet providing employees up-to-date information concerning personnel issues, and that each new employee should be given a manual in hardcopy form that can be updated, as necessary, when changes are made. Judge Chandler responded that although employees do not appear to be familiar with the rules they are being charged with; he felt there might be budgetary concerns in providing manuals and updates in hardcopy form. Chairman Sapp stated that he agreed, but that this matter should be conveyed to Ms. Bevington and discussed at the next Board meeting.

Before the meeting adjourned, the members were reminded that the next Board meeting was scheduled for Friday, February 17, 2012.

There being no further business, Mr. Blevins moved to adjourn. Judge Chandler seconded and the motion carried 7-0. (1:40 p.m.)

---

Wayne D. Sapp, Chairman

---

Larry B. Gillis, Vice Chairman

---

David B. Stevens, Member

---

David F. Hutcheson, Jr., Member

---

Susan Gardner, Member

---

Tommy Chandler, Member

---

Donald W. Blevins, Member